

APPEAL NO. 031610  
FILED AUGUST 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 12, 2003. The hearing officer determined that the decision of the Independent Review Organization (IRO) is not supported by a preponderance of the evidence. Appellant (carrier) appealed this determination on sufficiency grounds. The file did not contain a response from respondent (claimant). We reversed the hearing officer's decision and remanded the case for completion of the record because an exhibit was missing. Texas Workers' Compensation Commission Appeal No. 030543, decided April 18, 2003. The hearing officer completed the record and issued another decision with the same essential fact findings and conclusions. There was no hearing on remand. Carrier again appealed on the same grounds. The file does not contain a response from claimant.

DECISION

We affirm.

The applicable law and our appellate standard of review are discussed in Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002. Carrier contends that the hearing officer erred in substituting her judgment for that of the doctors and determining that the decision of the IRO is not supported by a preponderance of the evidence. In the IRO report, it stated that the "Rationale" for the decision was, "Endoscopic discectomy results are equivocal. Furthermore, this is a chronic pain patient with a *normal neurologic exam*. It has been over ten years since his injury. The chances are remote that this procedure would help him." [Emphasis added.]

Claimant's medical records showed an essentially normal neurological examination for years. However, there was evidence from Dr. U that claimant had abnormal reflexes and decreased sensation beginning in late 2002. Dr. U also noted that an MRI showed a herniated disc and that the L4-5 disc had a "large tear with extravasation of the dye that went into the right L4 nerve root sleeve." As correctly noted by the hearing officer, it is not clear what medical records the IRO examiner considered in making the IRO determination. These records from Dr. U were not listed on the IRO report. In a September 30, 2002, report addressed to carrier, Dr. S said, "reflexes are depressed in the left lower extremity," but "there is no evidence from radiographic studies of acute neurologic impingement or spinal instability . . . ." Dr. U had also noted that a 1993 EMG had shown radiculopathy. Dr. U said that claimant had complained in 2002 of pain radiating into his calf. As noted by the hearing officer, neither the IRO doctor nor Dr. S examined claimant.

The hearing officer concluded that the decision and order of the IRO was not supported by a preponderance of the evidence. We have reviewed the complained-of determination and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We also perceive no error in the hearing officer's determination that conservative treatment failed.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **ACE INSURANCE COMPANY OF TEXAS** and the name and address of its registered agent for service of process is

**JAVIER GONZALES**  
**3421 WEST WILLIAMM CANNON DRIVE, SUITE 131, PMB 113**  
**AUSTIN, TEXAS 78745.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Edward Vilano  
Appeals Judge